

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

AARON DAVID WALDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-20-00412-JD
)	
BRIAN MAUGHN, in his official capacity,)	
CARRIE BLUMERT, in her official capacity,)	
MYLES DAVIDSON, in his official capacity,)	
VICKI BEHENNA, in her official capacity,)	
KELLY ELIZABETH COLLINS, in her)	
official capacity,)	
HEATHER ELIZABETH COYLE, in her)	
official capacity,)	
ANTHONY QUINN COLEMAN, in his)	
individual capacity, and)	
TOMMIE JOHNSON, III, in his)	
official capacity,)	
Defendants.)	

ORDER

On March 22, 2023, the Court issued its Order [Doc. No. 27] accepting and adopting Judge Purcell's Report and Recommendation [Doc. No. 16] as modified within the Order. The Court also re-referred the matter to Judge Purcell for further screening of Mr. Waldon's claims against Defendants Vicki Behenna and Kelly Elizabeth Collins in their official capacities, as those were the only claims that survived the Court's Order of March 22, 2023.

The record reflects that the Court's Order was mailed to Mr. Waldon to his last known address in accordance with Local Civil Rule 5.4. [See 3/22/2023 docket text; *see also* Doc. No. 28]. The Order was returned to the Court with the notation "Return to

Sender, Not Deliverable as Addressed, Unable to Forward" on April 14, 2023. [Doc. No. 28]. Subsequently, the Court issued a Show Cause Order [Doc. No. 29] withdrawing its referral to Judge Purcell and directing Mr. Waldon to show cause on his failure to update his address in compliance with Local Civil Rule 5.4.¹ The Court directed Mr. Waldon to update his address within 21 days of the Order and advised that if Mr. Waldon had not updated his address or made some other filing within the 21-day period, the Court would dismiss without prejudice his remaining claims for failure to prosecute, failure to comply with the Court's orders, and failure to follow federal and local rules. [Doc. No. 29 at 2]. The Court also advised it would enter a judgment reflective of the Court's orders in accordance with Federal Rule of Civil Procedure 41(b). *See id.*

The Show Cause Order was returned to the Court with the notation "Return to Sender" on April 26, 2023. [Doc. No. 30]. To date, Mr. Waldon has not filed a change of address form or otherwise informed the Court of his new address.

Mr. Waldon's failure to update his address and his failure to comply with the Court's orders and the federal and local rules warrants dismissal of his remaining claims without prejudice. The Tenth Circuit has "consistently interpreted Rule 41(b) 'to permit courts to dismiss actions *sua sponte* for a plaintiff's failure to prosecute.'" *Huggins v. Supreme Ct. of the U.S.*, 480 F. App'x 915, 916–17 (10th Cir. 2012) (unpublished)

¹ Local Civil Rule 5.4 provides that a *pro se* litigant must file a change of address form when he moves, and the responsibility of the Court and the opposing parties is limited to mailing pleadings to a *pro se* litigant's last known address. Material mailed by the Court to the last known address furnished by the *pro se* litigant is deemed delivered. *See* LCvR5.4; *see also* Fed. R. Civ. P. 5(b)(2)(C) (service complete upon mailing to person's last known address).

(quoting *Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003)); *see also* *AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009) (explaining that dismissal without prejudice is warranted as a sanction for failure to prosecute or for a failure to comply with local or federal procedural rules); *United States ex rel. Jimenez v. Health Net, Inc.*, 400 F.3d 853, 855 (10th Cir. 2005) (dismissal appropriate where a party disregards court orders and fails to proceed as required by court rules); *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992) (dismissal appropriate where party neglects their case or refuses to obey court orders).

Accordingly, Mr. Waldon's remaining claims against Defendants Vicki Behenna and Kelly Elizabeth Collins are dismissed without prejudice to their refiling. A judgment shall follow.

IT IS SO ORDERED this 11th day of May 2023.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE